

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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<b>WILLIAM JEWETT, JR.,</b>	)	
<b>Petitioner</b>	)	
	)	
v.	)	<b>Civil Action No. 05-11849-GAO</b>
	)	
<b>BERNARD BRADY,</b>	)	
<b>Respondent</b>	)	
	)	
	)	

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**PETITIONER'S MOTION FOR DISCOVERY**

Petitioner, William Jewett, Jr., moves this Court pursuant to Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts, to allow and provide funds for discovery in the following two related areas:

- 1) allow the depositions of Detective Sergeant Richard Craig and State Police Lab Chemist Mary McGilvrey<sup>1</sup>; and
- 2) allow funds for petitioner to retain an expert in forensic science to consult regarding the issues regarding the age of sperm herein.

In support whereof, petitioner states that there are two basic charges at issue herein, the alleged rape and murder of Jennifer Mullin. Several of the legal issues presented in his petition revolve around the question of the age of the sperm found in the deceased. Ms. McGilvrey testified at trial that the age of the sperm could not be determined. Tr. Volume 4, pp. 129-130, attached hereto as Exhibit 1. However, prior to trial, Ms. McGilvrey made statements to Detective Sergeant Craig that the sperm's age could be determined, and was approximately 36

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<sup>1</sup> Ms. McGilvrey testified at trial under her maiden name of Mary Lumley.

hours prior to the time of death.<sup>2</sup> Supp. Ans., Ex. 4, pp. A30-A31, attached hereto as Exhibit 2.

If the sperm was established to have been 36 hours old at the time of death, the Commonwealth's allegation that the deceased was raped after leaving a party with the petitioner would be completely refuted.

Ms. McGilvrey has never been confronted with or required to explain her pre-trial statements under oath, either at trial or subsequently.<sup>3</sup> One of the issues in this petition is trial counsel's failure to confront Ms. McGilvrey with her pre-trial statements, due to counsel's stated failure to notice her pre-trial statements in the discovery. Supp. Ans., Ex. 4, pp. 38-40, 82, attached hereto as Exhibit 5. Petitioner contends this failure constituted a violation of petitioner's right to counsel, falling below an objective standard of reasonableness and prejudicing petitioner's defense. In addition, petitioner has never been able to consult an independent expert regarding how closely the age of sperm can be established.

Where this evidence is critically important to determining the truth of the allegations for which petitioner is currently serving a life sentence, the Commonwealth's failure to allow him to develop the evidence was an unconstitutional deprivation of due process, and this Court should

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<sup>2</sup> Statements may have been made to other officers, as there are two sets of unsigned police notes indicating that the semen was old. Supplemental Answer Ex. 4, pp. A32-A33, attached hereto as Exhibit 3. Defendant reserves the right to request discovery regarding these notes if their author(s) can be determined.

<sup>3</sup> The state courts denied petitioner's motion for new trial without a hearing. Supplemental Answer Exhibit 1, relevant portion attached hereto as Exhibit 4.

ensure that a full and fair review of the evidence is conducted. It is in the interests of justice to allow this discovery.

WILLIAM JEWETT, JR.  
By his attorney,

/s/ John H. Cunha Jr.

John H. Cunha Jr.  
B.B.O. No. 108580  
CUNHA & HOLCOMB, P.C.  
One State Street, Suite 500  
Boston, MA 02109-3507  
617-523-4300

Dated: March 21, 2008

H:\Word\Crim\Jewett\motion for discovery.wpd

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic filing upon AAG Eva M. Badway, Attorney General's Office, One Ashburton Place, Boston, MA 02108-1698.

/s/ John H. Cunha Jr.  
John H. Cunha Jr.

Volume: 4  
Pages: 172  
Exhibits

RECORDED X

COMMONWEALTH OF MASSACHUSETT

BRISTOL, ss.  
Indictment No. 99983-84

SUPERIOR COURT

OCT 3 2003

COMMONWEALTH OF MASSACHUSETTS

vs.

WILLIAM C. JEWETT

BEFORE: Honorable Suzanne DelVecchio

TRIAL TRANSCRIPT

FILED  
COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPT. OF THE TRIAL COURT  
PLYMOUTH COUNTY

JAN 11 2003

APPEARANCES:

Paul C. Dawley and Frank M. Gaziano, Assistant  
District Attorneys, Plymouth District, 32 Belmont Street,  
Brockton, Massachusetts 02403, for the Commonwealth.

Robert L. Jubinville, Esq., 424 Adams Street,  
Milton, Massachusetts 02186, for the Defendant.

Brockton Superior Courthouse  
Brockton, Massachusetts  
Thursday, November 19, 1998

MARILYN SILVIA  
Official Court Reporter

1                   prepared by taking that cotton-tipped swab and  
2                   rubbing it over the microscopic slide. There's  
3                   no agitation that is going to knock off the  
4                   tails. A vaginal smear slide could have intact  
5                   sperm cells if they were present in the vaginal  
6                   cavity.

7                   Q. When you looked at the vaginal smear slide, did  
8                   you see tails or did you not see tails?

9                   A. I did not see any tails on the vaginal smear  
10                   slide.

11                   Q. What can you tell us about the age of sperm cells  
12                   when you observe a tail?

13                   A. On a vaginal smear slide, if I observe sperm  
14                   cells with tails, then I can draw a conclusion  
15                   that the sperm cells were deposited more recently  
16                   as opposed to a longer period of time. I cannot  
17                   pinpoint an exact time frame that we're talking  
18                   about. But, as I said, because the tails are the  
19                   first thing to be degraded in the vaginal cavity,  
20                   if you see tails, you know it's more recent than  
21                   if you don't see tails.

22                   Q. If you don't see tails what can you say about the  
23                   age of the sperm cells?

24                   A. If I don't see tails on a vaginal smear slide, I  
25                   can really draw no conclusion as to how long

1 those sperm cells have been present in the  
2 vaginal cavity. Except we do know that sperm  
3 cells will only remain present in the vaginal  
4 cavity for several days. It could be three days,  
5 four days, it could be seven days. But they will  
6 also be there immediately after the incident as  
7 well, but I can draw no real conclusion about the  
8 time frame.

9 Q. What was item 2B?

10 A. 2B are the tan pantyhose that were recovered from  
11 Jennifer Mullin.

12 Q. Let me show you another bag with some markings on  
13 it. Would you identify this item.

14 A. This item has the markings that I wrote on the  
15 bag and on the pantyhose indicating the lab  
16 number, the item number, my initials and the  
17 description of the garment.

18 Q. Did you notice any damage to the pantyhose?

19 A. Yes, I did.

20 Q. What did you notice?

21 A. One leg of the pantyhose was completely torn away  
22 from the other leg of the pantyhose. So when I  
23 received this item, it was actually in two  
24 pieces, one leg, and then the rest of the  
25 pantyhose.

HOMICIDE INVESTIGATION  
Rockland Police Department  
Report Number 02-33-01  
Supplement by Det. Sgt. Richard Craig  
05 Feb 93 Friday

11:20am Received call from CPT Rumble, Weymouth PD. He has gotten a call from Kelly Johnston, Hingham. She stated to me that on the morning of 30 JAN 93, at about 6:30 - 6:45am, she got up like she does every Saturday morning, and drove to Weymouth to buy donuts. She said that just after the Weymouth line, as she headed north, she observed a black boot in the middle, on the center line, of High Street. She said that she is reporting this now, as she has just learned more about the "missing" boot from reading the paper.

Her information is:

Kelley Johnston  
103 High Street  
Hingham, Mass.  
740-4369

11:05am Spoke to Off. McCracken, Hingham Police Department. He said they had recently removed guns from the home of a party named

ROBERT W. MROZ  
15 Spruce St.  
Hingham, Mass.  
DOB: 06/04/59

He said this party had recently beaten up his girlfriend, and when he came to reclaim guns which had been taken away from him when she obtained a 209A, he took McCracken aside and stated he'd been a neighbor once of the [REDACTED] family, and wasn't it ashame about [REDACTED]?

McCracken thinks Mroz is kind of strange, and thought that the situation was strange. He watched Mroz leave the station parking lot (It was about 9:00pm) and noted that the car looked like an older, "boxie" looking car, and appeared to be light blue.

11:10am I spoke with

CHERYL SACHETTI  
WEYMOUTH HIGH SCHOOL EMPLOYEE  
340-2580

Last night, Trp. Berna had advised me that he'd learned from the State Police Laboratory that while the post mortem did not reveal that she'd been raped, it did reveal that she'd had sex approximately 36 hours or so before death, because

[REDACTED] HOMICIDE INVESTIGATION  
Rockland Police Department  
Report Number 02-33-01  
Supplement by Det. Sgt. Richard Craig  
05 Feb 93 Friday

22

there were small amounts of sperm deep inside her vagina. The lab also confirmed small deposits of "old" sperm on her panties, which indicated she had changed her panties some time after her sexual encounter. The lack of sperm, etc., on her body would be consistent with her having showered, as had been reported to us earlier.

I was contacting the school to determine Jen Mullins' attendance records, in order to help ascertain when she could have had the opportunity to have had sex prior to her murder, and possibly with whom.

On the phone,

10:20<sup>A</sup> Checked around 94 H. St. (Sosa's) where boot Ban (183-JG-C / Parked in yard).

10:34<sup>A</sup> ~~✓~~ Many (un) - ~~some~~ - (more before, i.e., men have had sex Th - Or' Fri. afternoon).

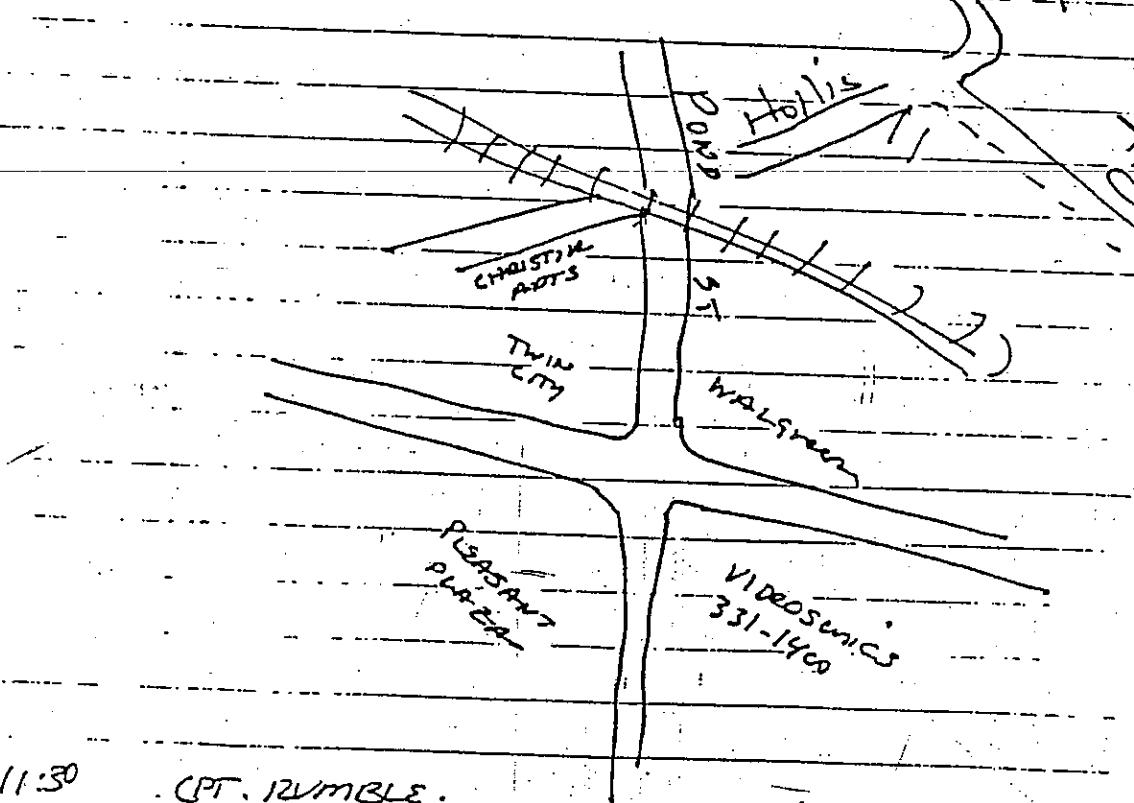
CURTIS: ?

10:40 Gave ~~SB~~ map of area.

10:45 ~~SB~~ P. 200 L - to ✓ on [REDACTED] activities Th.

10:45 396-AFL @ 136 Pine St  
(Did murder scenes to Boot via  
WACO etc)

11:00<sup>A</sup> Rte. 228 to Wey to Sharp to Roipsy  
--- Talbot - up to Columbus Sq.



WEYMOUTH TAXI CO'S.

① GREEN TAXI - 335-193: DARREL PHILLIPS - NO  
EARLY NM FOR AREA O.

AROUNDS  
2/10/93

② TOWN TAXI 337-5662  
LARRY BOWEN

Off Mike Milligan - WPD  
59 Swan Ave.

FM Chemist May Lumley - sexual contact  
of victim was approx. 24-30 hrs. prior to  
death (no less than 24 hrs.) Blood typing  
of the semen sample is NOT possible due  
to size and lack of certain chemical  
properties - to attempt such a test would  
result in destruction of the sample. It  
is however, DNA viable should we want  
to do that.

Attn. Bill Brown  
109 Ft 53 (across from Flower Shop)  
Weymouth  
Represents Ten Mullis family

Spent the day doing walk for Turner Rd.  
across to Jewett's house. Neg. results. -

BERNA  
KELLHER  
CRAIG  
GASHEEN

Filed 03/24/2008

OFFENSE	PLACE	PRESIDING JUSTICE	COURT REPORTER	COUNSEL FOR COMMONWEALTH		COUNSEL FOR DEFENDANT	
				MURDER	ROCKLAND	MARNOLD TAJRIN, BOSTON ROBERT JUBINVILLE, MILTON R. GOLDMAN, GRANBY CPCS	
Frank Gaziano, ADA Paul Dawley, ADA	Rockland						
Murder							
October 6	1	Returned into court and ordered filed.					
October 7	2	Motion of the Commonwealth requesting warrant on indictment filed and allowed					
October 7	3	Warrant on indictment (Tierney, J.)					
October 7	4	Warrant recalled					
October 7	5	Appearance of Gaziano/Dawley for the Commonwealth					
October 7	6	Appearance of Tajrin for the defendant					
October 7	7	Pleads Not Guilty					
October 7	8	Ordered held without bail					
October 7	9	Special mittimus on indictment issued					
October 7	10	Case continued to October 27, 1997 for pre-trial conference (Doerfer, J.)					
October 20	8	K. Lindelof, court reporter					
October 31	9	Special mittimus returned with service					
October 31	10	Attorney Tagrin's motion to withdraw					
		Appearance of Robert Jubinville for the defendant					
		Pre-trial conference report filed					

## COMMONWEALTH

## VS. WILLIAM CLEMENT JR.

DATE	DOCKET/ENTRIES	VS.	DATE
2003 July 23 August 4	Initial Order upon deft's motion for a new trial (see 99983) Deft's motion for one week extension to comply with order dated July 23, 2003 filed and is hereby allowed Time to comply is extended one week (Giles, J.)		
Agusut 4 September 18	Response of Compliance with Courts order of July 23, 2003 Deft's motion for new trial denied without hearing(see Memorandum of Decision(see 99983) Memorandum of Decision and Order upon deft's motion for new trial(see 99983) (Giles, J.)		
October 6 October 8	Defendant's notice of appeal from denial of motion for new trial filed (see 99983) Notice to Justice, DA and Defense counsel of defendant's notice of appeal from denial of motion for a new trial(see 99983)		
October 27	Record on appeal transmitted to the appeals court(see 99983)		
2004 September 13 September 16	Notice to DA and Defense counsel that record on appeals has been transmitted to the SJC ORDER(SJC): The petition for rehearing filed in the above captioned case has been considered by the court and is denied, entered September 10, 2004 ORDER(SJC): For the reasons outlined in the opinion we affirm the convictions of murder in the first degree and rape and the order denying the defendant's motion for a new trial, entered Aug. 12, 2004		
2005 March 14 April 8 April 20	Commonwealth's notice that evidence (personal property of the decedent) will be returned to the decedent's family (see 99983) Attorney Jacobson's motion to withdraw as counsel for the defendant (see 99983) Attorney Jacobson's motion to withdraw as counsel for the defendant is allowed (DelVecchio J.)		

## AFFIDAVIT OF MYLES JACOBSON

I, Myles Jacobson, with offices at 90 Conz St., Northampton, MA, hereby depose and say:

1. I am an attorney appointed by CPCs to represent Appellant William Jewett for purposes of post-conviction relief in Commonwealth v. William Jewett, SJC 08285. My responsibilities in this regard include a certain amount of fact investigation which, because appellants have no right to funds for an investigator, sometimes need to be undertaken by the attorney or not at all.

2. In this case, my fact investigations included the following:

(a) On April 14, 2003, I spoke in person with Mark Obershaw who was then in custody at the Northern State Correctional Facility in Newport, Vermont. Mr. Obershaw informed me that his testimony against Jewett at his murder trial had followed an understanding reached with Massachusetts police officers. That understanding was twofold: (1) Obershaw did not need to worry that he would be convicted of first degree murder on the charge of first degree murder then pending against him; and (2) any sentence Obershaw might receive could be served in a prison outside Massachusetts. Mr. Obershaw was unwilling to sign an affidavit to this effect, but he advised me that what he was telling me was corroborated by remarks made at his motion to suppress hearing.

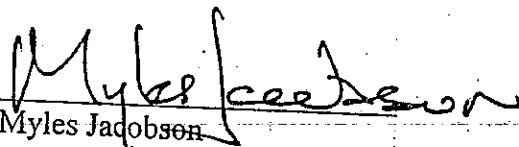
(b) On November 20 and 24, 2002, I spoke by telephone to a person who identified herself as Mrs. Kim Quam of 65 Colby Rd., Rockland, MA. Mrs. Quam said she was Gary Quam's mother. Gary Quam had testified before the grand jury in Jewett's case, but not at trial. Because the trial transcript shows that Gary Quam had recanted his testimony and was therefore not being called as a government witness, I had called to inquire why he had recanted. Mrs.

Quam told me that her son had been pressured by the police (or words to that effect) to say more against Jewett than he knew. Although after his contact with the police he agreed to testify at the grand jury, according to his mother, he was uncomfortable with his testimony and informed the government that he did not want to testify at trial. I was unable to communicate directly with Gary Quam. Also, I was unable to reach Mrs. Quam again to ask for an affidavit.

3. On April 9, 2002, I had a telephone conversation with Attorney Robert Jubinville, trial counsel for Mr. Jewett. On April 10, 2002, I followed up with a letter to Mr. Jubinville, which is attached to this affidavit. I believe the representation made in the letter to be true, and I received no response from Mr. Jubinville suggesting otherwise.

The foregoing is true to the best of my information and belief.

Signed under the penalties of perjury, May 20, 2003, Northampton, MA.

  
Myles Jacobson

MYLES JACOBSON, ATTY.

90 CONZ STREET  
P.O. BOX 1389  
NORTHAMPTON, MA 01061

\_\_\_\_\_  
(413) 582-1800

April 10, 2002

By Fax 617-698-8004 and Mail

Robert L. Jubinville, Esq.

487 Adams St.

Milton, MA 02186

Re: Commonwealth v. William C. Jewett No. 99983-84

Dear Mr. Jubinville:

Thanks for the conversation yesterday regarding Mr. Jewett's case. This is to follow up with a few issues relating to a police report apparently provided in discovery: pg 7.1 and 7.2 of Det. Sgt. Craig's report of Feb. 5, 1993. See enclosed.

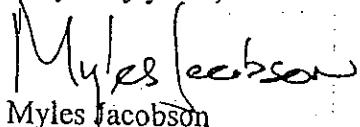
(1) At the bottom of pg. 7.1 and the top of pg. 7.2, please note that reference is made to the post mortem revealing that the sperm in the victim's vagina and panties was "old," i.e., not consistent with having been deposited on the day of her death. When we spoke yesterday, I believe you told me that you did not recollect this information and had not followed up on that issue in the course of trial preparation. I assume that I understood you correctly, but if not, please let me know.

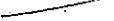
(2) Concerning the age of the sperm, if you have seen a relevant chemist or other report or if you have any relevant information, please let me know.

(3) Finally, you will note that the report on pg. 7.2 ends in mid-sentence. If you have seen or know anything about a more complete copy, please let me know.

As you know, I am trying to evaluate these issues for a possible motion for a new trial. Any further information you have will be appreciated.

Very truly yours,

  
Myles Jacobson

enc.: 

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SJC-08253

COMMONWEALTH,  
Appellee

v.

WILLIAM JEWETT,  
Appellant

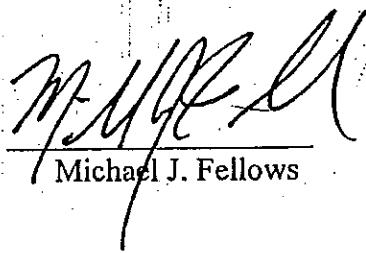
SWORN STATEMENT OF MICHAEL J. FELLOWS

I, Michael J. Fellows of 64 Kensington Ave., Northampton, MA, state as follows:

1. I have been employed as a legal clerk for Myles Jacobson since February, 2002.
2. On or about April 9 or 10 of 2002, I participated in a telephone interview of Attorney Robert Jubinville with Attorney Jubinville's knowledge and consent.
3. During that conversation, Attorney Jubinville was asked whether he remembered evidence in the police files from the investigation of the murder of [REDACTED] suggesting that the sperm found in and on [REDACTED] somebody was old at the time of her death.
4. Attorney Jubinville responded that he did not recall ever having seen that information, nor did he have any memory of the issue.

The above statements are known to me personally and are true to the best of my knowledge and belief.

Signed, under the pains and penalties of perjury, on April 30, 2003.

  
Michael J. Fellows